



June 7, 2013

By electronic mail to armitage.thomas@epa.gov

Dr. Thomas Armitage
Designated Federal Officer
SAB Staff Office

Re: Comments on List of Candidates for Science Advisory Board Panel to Review the Environmental Protection Agency's Draft Science Synthesis Report on the Connectivity of Streams and Wetlands to Downstream Waters

Dear Dr. Armitage:

The Waters Advocacy Coalition ("Coalition") submits the following comments on the List of Candidates posted on the Science Advisory Board's ("SAB") website to be considered for the SAB Panel that will review the Environmental Protection Agency's ("EPA") Draft Science Synthesis Report on the Connectivity of Streams and Wetlands to Downstream Waters ("Draft Report"). The Coalition represents a large cross-section of the Nation's construction, housing, mining, agriculture, and energy sectors, all of which are vital to a recovering national economy, including providing much-needed jobs. The activities of the Coalition members are regulated by numerous provisions of the Clean Water Act ("CWA"), its implementing regulations, and interpretive guidance documents. The scope of CWA jurisdiction over navigable waters is of fundamental importance to both Coalition members and the Nation.

EPA's Office of Research and Development asked the SAB to convene a panel to conduct a peer review of its Draft Report, which "synthesizes the peer-reviewed scientific literature pertaining to biological, chemical, and hydrologic connectivity of waters, and the effects that small streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans." 78 Fed. Reg. 15,102 (March 8, 2013). In March, the SAB staff office sought nominations of recognized experts in related disciplines, which were then posted online for comment. We understand that, in selecting the final members of the SAB panel, the SAB staff office will consider any submitted public comments, information provided by the candidates, and background information independently gathered by the SAB staff office. According to the Federal Register notice, "selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and (f) for the panel as a whole, diversity of expertise and viewpoints." *Id.* at 15,103.

The Coalition appreciates the opportunity to provide comments regarding the make-up of this very important panel. We understand that the Draft Report has been finalized but not released to

the public, and that it synthesizes existing information relating to connectivity—the physical and ecological relationship between stream headwaters and downstream receiving waters. While the concept of connectivity is not discussed directly in the EPA and U.S. Army Corps of Engineers (“Corps”) Guidance on Identifying Waters Protected by the Clean Water Act (2012) (“Draft Guidance”), the Draft Guidance discusses possible connections a non-jurisdictional water can have to a jurisdictional water (e.g., significant nexus, continuous surface connection, etc.). Thus, the Draft Report, when finalized, may significantly influence how the EPA and Corps may identify waters to be protected under the CWA. Indeed, EPA has indicated that it will rely on the Draft Report, once finalized, in the field. Therefore, WAC and its members have a strong interest in the Draft Report, composition of the SAB panel, and its peer review on the Draft Report.

WAC understands that EPA has already completed the Draft Report, which currently awaits review by the SAB panel and the public. We are also aware that the Draft Report is substantial, consisting of several hundreds of pages of highly technical scientific studies in multiple disciplines. A report of this magnitude – in both importance and complexity – will require close scrutiny by the public, including review by consultants and experts with particularized knowledge across a broad spectrum of the sciences. The level of review required will be impossible to complete in any meaningful way within the 60 to 90 days the SAB intends to provide for public review and comment. Therefore, WAC strongly urges the SAB to make the Draft Report available to the public immediately and well in advance of initiation of the panel’s review. In so doing, the SAB will ensure that the public has adequate time to thoroughly review and prepare thoughtful comments that can be used to inform the SAB panel deliberations. Indeed, SAB panel review is the only “outside” scientific peer review EPA will provide. The integrity of the SAB process and the credibility of the report itself relies on a fair and open vetting of the Draft Report, and that process should begin now.

Further, WAC strongly urges the SAB to select experts with pertinent, and significant, field experience for the SAB panel. Because the final report has the potential for wide-ranging implications for many sectors of our Nation’s economy, it is of critical importance that the panel be well positioned to evaluate both the scientific validity of the independent studies being synthesized, as well as any conclusions that may be drawn from those analyses. It will take the expertise of both academics and experts with practical experience to offer a fully rounded perspective of the Draft Report’s implications.

Considering these factors, WAC recommends the following individuals for selection on the SAB panel:

- (1) Dr. Michael Josselyn: Mr. Josselyn has over two decades of experience as a Professor of Biology and Director of the San Francisco State University’s Romberg Tiburon Center for Environmental Studies. He is a certified Professional Wetland Scientist and has previously served on national advisory committees to the EPA and the Corps in the development of federal wetland policy and research. His work focuses on wetland delineation and regulatory permitting, including projects for transportation agencies, port authorities, land holders, and non-profit

organizations. His diverse client base and decades of experience in both academic and private sectors will provide valuable experience and expertise to the panel.

(2) Mr. Frank Corkhill: Mr. Corkhill is the Chief Hydrologist at the Arizona Department of Water Resources and has worked for the State of Arizona for approximately two decades. An expert from a state agency will promote diversity of viewpoints by ensuring that at least one state perspective is considered. Arizona, in particular, faces critical water shortages and has considered the issue of connectivity in other contexts. Mr. Corkhill's specific area of expertise—numerical groundwater modeling—will be of particular value to this panel.

(3) Mr. Tony Bomkamp: Mr. Bomkamp has over thirty years of regulatory experience relevant to the issue of connectivity. He has taught at California State University and also represents private clients as an environmental consultant at Glenn Lukos Associates. He has particular expertise in wetland and stream delineation and regularly performs and supervises wetland delineations, riparian habitat evaluations, and wetland functional assessments.

(4) Dr. Mark Murphy: Dr. Murphy is Vice President, Operations Manager, and Senior Water Resources Scientist in the Tucson office of GeoSystems Analysis, Inc. His primary area of expertise is the physical ecology of aquatic systems, specifically how fluvial geomorphology and shallow groundwater hydrology conspire to create habitat. Dr. Murphy's research has focused on connectivity in arid fluvial systems. He is currently attempting to understand how the fluvial network supports a unique riparian gallery forest in central New Mexico. Along with his colleagues, Dr. Murphy is measuring drought stress in Arizona sycamores as a function of groundwater availability and distribution in the floodplain.

(5) Dr. Ben Parkhurst: Dr. Parkhurst works for HAF, Inc., an environmental consulting firm, focusing on applied aquatic ecology, which studies the relationships between aquatic organisms and their environment. He has worked throughout the United States and in several foreign countries for clients including EPA, U.S. Department of Energy, U.S. Nuclear Regulatory Agency, the Water Environment Research Foundation, mining companies, energy companies, municipalities, and law firms. Much of his professional work has been in the arid West, where extreme variability in hydrology is a major stressor affecting aquatic life.

(6) Dr. Robert Pierce: Dr. Pierce is President and a principal instructor with the Wetland Training Institute, which conducts training courses throughout the Nation on water resource related topics. Dr. Pierce also provides consulting services for individuals and organizations with projects seeking federal, state, and local regulatory approvals. He has extensive experience in hydrology, including conducting numerous quantitative analyses of surface and/or ground water sources, interactions, and connectivity for purposes of CWA jurisdictional consideration and mitigation plans. Dr. Pierce previously worked for the Corps at both the division and headquarters levels.

(7) Mr. Ken Passarella: Mr. Passarella is President and Principal Ecologist for Passarella & Associates, Inc., an ecological consulting firm. His expertise, garnered over twenty five years of practice, includes ecological assessments, state and federal wetland jurisdictional determinations,

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wetland mitigation, wetland mitigation banking management, design, permitting, and construction, and environmental project management.

Thank you for considering these comments and recommendations. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Deidre G. Duncan". The signature is written in a cursive, flowing style.

Deidre G. Duncan

Partner, Hunton & Williams LLP

Counsel for the Waters Advocacy Coalition